

## II. Remarks

Claims 25-40 and 42-45 were previously pending. Applicants appreciate the indication that claims 25-28, 35-40, and 42-45 are allowed. Claims 29-34 were rejected in the previous Office Action. As set forth above, claim 29 has been amended. Reconsideration of claims 25-40 and 42-45 is requested in light of the above amendments and the following remarks.

### **§102 Rejection**

The Office Action indicated that **claim 29** is rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Application Publication 2005/0065611 to Huppert et al. (“the Huppert patent”).

The PTO provides in MPEP §2131 that

“[t]o anticipate a claim, the reference must teach every element of the claim . . .”

Therefore, to sustain the rejections of claim 29 the Huppert patent must teach all of the claimed elements.

With respect to amended independent claim 29, the Huppert patent at least fails to teach, “preparing the disc space for insertion of a motion preserving prosthetic device, including cutting a transforaminal slot in at least one of the first intervertebral member and the second intervertebral member, the transforaminal slot curved along its length.” The Huppert patent simply fails to teach cutting a transforaminal slot curved along its length as recited. Thus, for at least this reason Huppert patent fails to teach all of the claimed elements of independent claim 29. Therefore, Applicants request that the §102 rejection of claim 29 be withdrawn.

The Huppert and Michelson patents were combined in the Office action to reject dependent claims 30-33. However, even when combined, these references at least fail to disclose, “preparing the disc space for insertion of a motion preserving prosthetic device, including cutting a transforaminal slot in at least one of the first intervertebral member and the second intervertebral member, the transforaminal slot curved along its length,” as recited in amended claim 29. Neither, the Huppert patent nor the Michelson patent discloses cutting a



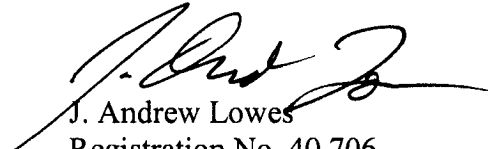
transforaminal slot curved along its length as required. Accordingly, even when combined the Huppert and Michelson patents fail to disclose all of the claimed elements of claim 29. Claims 30-34 depend from and further limit claim 29. Therefore, Applicants request that the rejection of claims 30-34 be withdrawn.



### III. Conclusion

It is believed that all matters set forth in the Office Action have been addressed, and that all pending claims are in condition for allowance. Favorable consideration and an indication of the allowance of the claims are respectfully requested. Should the Examiner deem that an interview with Applicant's undersigned attorney would expedite consideration, the Examiner is invited to call the undersigned attorney at the telephone number indicated below.

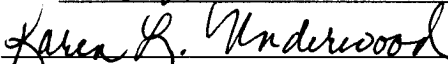
Respectfully submitted,

  
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I hereby certify that this correspondence is being filed with the United States Patent and Trademark Office via EFS-Web on the following date.

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